

**INTERFERENCE
DIGEST**

Interference No. 103,217 Paper No. 33
Name, Lester P.J. Burton
Serial No. RE 07/714,441 Patent No. _____
Title, ANTIOXIDANT AROMATIC FLUOROPHOSPHITES
Filed, June 13, 1991
Interference with Robert C. Babillis et al

DECISION ON MOTIONS

Examiner-in-Chief, _____ Dated, _____

FINAL DECISION

Board of Patent Appeals and Interferences, Favorable Dated 5/13/97

Court, _____ Dated, _____

REMARKS

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

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UNITED STATES PATENT AND TRADEMARK OFFICE

MAILED

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

MAY 13 1997

ROBERT C. BABILLIS, STANLEY V. MARTIN
and RANDALL A. REED
Junior Party¹

PAT.&T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

v.

LESTER P. J. BURTON
Senior Party²

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FINAL DECISION

Before SOFOCLEOUS, CAROFF and DOWNEY, Administrative Patent Judges.

DOWNEY, Administrative Patent Judge.

Senior party Burton filed a request for reexamination of the involved Babillis et al. patent and such request was granted, see

¹ Application 07/292,165, filed December 30, 1988, now Patent No. 4,962,144, issued October 9, 1990. Assignor to General Electric Company, a corporation of New York.

² Application 07/714,441, filed June 13, 1991. Accorded Benefit of U.S. Serial No. 07/020,023, filed February 27, 1987, now Patent No. 4,912,155, issued March 27, 1990.

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Control No. 90/003,243. Junior party patentee Babillis et al. filed a reissue application, Ser. No. 08/166,968. The Patent and Trademark Office (PTO) merged the reissue and reexamination proceedings.

In the reexamination and reissue proceedings, the primary examiner rejected all of the Babillis et al. claims as unpatentable under 35 U.S.C. § 102(e) as anticipated by, or in the alternative, under 35 U.S.C. § 103 as obvious over Burton (U.S. Patent 4,912,155), Burton's corresponding European Patent Application 0,280,938 and/or Ethyl Corporation Bulletin.

On December 19, 1996, the Board affirmed the primary examiner's rejections, see *Ex parte* GENERAL ELECTRIC CO. and ROBERT C. BABILLIS et al., Appeal No. 96-3103 and Appeal No. 96-3531.

Babillis et al. were given until April 20, 1997, to file an appeal, to commence a civil action or to take any other appropriate action with regard to the reissue and reexamination cases. Babillis et al. failed to continue prosecution and the time for taking such action has now expired. Accordingly, pursuant to 35 U.S.C. § 307 and 37 C.F.R. § 1.570, the reexamination proceeding is terminated and the Commissioner will issue and publish a certificate canceling the patent claims. No

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further Office proceedings will be conducted with regard to the Babillis et al. patent or reissue application. See 37 C.F.R. § 1.570(d).

In this interference proceeding, Burton filed a motion for judgment premised upon the same rejection in the reexamination proceeding. The APJ, inter alia, granted Burton's motion and placed Babillis et al. under an order to show cause. (Paper No. 35) Babillis et al. responded and requested, inter alia, a final hearing to review the granting of the Burton motion for judgment³.

In view of the failure by Babillis et al. to continue prosecution of the merged reissue and reexamination proceedings, the request for final hearing is deemed moot and it is appropriate to enter judgment in this proceeding.

Judgment

Judgment as to the subject matter of the count in issue is awarded to Lester P. J. Burton, the senior party. Accordingly, Robert C. Babillis, Stanley V. Martin and Randall A. Reed are not

³ Babillis et al. requested review of the dismissal of the Burton motion for judgment with respect to reissue application claims 6-10; dismissal of the Babillis et al. motions (1) to add its reissue application to the interference; (2) for judgment on the ground of no interference-in-fact; (3) to designate Babillis et al. claims 1-5 as not corresponding to the count; (4) to consider a belated motion for judgment against the party Burton; and (4) belatedly filed, for judgment that Burton claims are unpatentable based on admissions.

entitled to their patent containing claims 1-5 corresponding to the count.

MICHAEL SOFOCLEOUS
Administrative Patent Judge

MARC L. CAROFF
Administrative Patent Judge

MARY E. DOWNEY
Administrative Patent Judge

BOARD OF PATENT
APPEALS AND
INTERFERENCES

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